

Maricopa County Justice of the Peace Bench Comments

Regarding the Petition to Amend Rule 31(d), Arizona Rules of the Supreme Court

The Maricopa County Justice Court Bench strongly opposes the proposed change to Rule 31(d), Arizona Rules of the Supreme Court, to allow an authorized agent of a planned community association or a condominium unit owners' association to represent the association in procedures before the small claims division of Arizona's justice courts.

Our arguments opposing this modification are listed below:

Management companies are not qualified to represent associations in small claims actions – Arizona Revised Statutes § 22-512 (B) specifies that:

B. Notwithstanding section 32-261, in a small claims action:

- 1. An individual shall represent himself.*
- 2. Either spouse or both may represent a marital community.*
- 3. An active general partner or an authorized full-time employee shall represent a partnership.*
- 4. A full-time officer or authorized employee shall represent a corporation.*
- 5. An active member or an authorized full-time employee shall represent an association.*
- 6. Any other organization or entity shall be represented by one of its active members or authorized full-time employees.*

An attorney-at-law shall not appear or take any part in the filing or prosecution or defense of any matter designated as a small claim.

The statute clearly prohibits management companies from representing associations in small claims actions and any such exemption would necessitate a statutory change. The exemption cannot be enacted simply by changing rule 31(d).

Furthermore, while homeowners associations hire management companies to assist with the collection of debt, the fiduciary responsibility of the association ultimately rests with the board. The management company can be utilized as a witness with regard to the payment history of association members; however allowing them to act as both plaintiff and witness to the case would be awkward and confusing for the judge or hearing officer that is presiding over the action.

The proposed change will open the door for requests from similar entities – Carving out a specific exemption for authorized agents of planned community associations and condominium unit owners' associations will open the door to exemption requests from similar entities, such as authorized agents for apartment complexes or privately owned rental homes. Once one such exemption is approved, it will be difficult to prevent similar entities from gaining their own exemption through a rule change in the near future. It should be noted that such exemptions have been pursued statutorily in the past.

The proposed rule change may lead to venue confusion – The proposed change has the potential to create confusion about the proper venue and/or jurisdiction for association matters. Management companies typically represent a number of associations throughout the Valley and may not be located in the same precinct as some or all of their clients. A.R.S. § 22-202(D) allows:

D. Actions for collection of an account, enforcement of a contract or any other claim may be brought in the precinct where the account, contract or other claim was made or entered into, or where the defendant lives, at the option of the plaintiff.

While the association may use the mailing address of the management company, it would be improper for the company to claim venue and/or jurisdiction if the association is not physically located in the same precinct.

For the foregoing reasons, we urge the Court not to approve this recommended modification.

Submitted on behalf of the Maricopa County Justice Court Bench by:

Lester N. Pearce
Presiding Justice of the Peace
Maricopa County Justice Courts
222 N. Central Ave., Suite 210
Phoenix, AZ 85004
(602) 372-1743
Fax: (602) 372-1722
lesterpearce@mcjc.maricopa.gov